

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ANTHONY MENDES
AND DORIS MENDES,

Plaintiffs,

v.

CENDANT MORTGAGE,

Defendant.

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C. A. No.: 05-11765-DPW

PLAINTIFFS' RESPONSE TO DEFENDANT'S RULE 56.1 STATEMENT OF FACTS

Plaintiffs, Anthony and Doris Mendes, hereby submit their response to
Defendant's Rule 56.1 Statement of Facts.

1. Admitted.
2. Denied. There is no evidence indicating that Mr. and Mrs. Mendes obtained representation as to obtaining financing from Cendant. They received representation only in connection with a purchase and sale agreement and related documents. Deposition of Anthony Mendes ("A. Mendes Dep."), pp. 54-55.
3. Denied. Mr. Luongo sent letters which guaranteed financing. The June 12, 2001 did not attach conditions. A. Mendes Aff., ¶2, Exhibit B.
4. Admitted except that Mr. and Mrs. Mendes may have owned the property one time before June 12, 2001.
5. Admitted.

6. Denied. Cendant completed the application. It never sent a copy to Mr. and Mrs. Mendes. Cendant also selected an FHA loan without approval or consultation with Mr. and Mrs. Mendes. A. Mendes Dep., pp. 45, 52-53, 78-79, 195; A. Mendes Aff., ¶10.

7. Denied. The application indicates those amounts but not that Mr. and Mrs. Mendes provided such amounts. Affidavit of Christopher J. Trombetta (“Trombetta Aff.”), ¶8, Exhibit G.

8. Denied. Mr. and Mrs. Mendes submitted or Cendant obtained information to verify the amounts set forth in the application. A. Mendes Aff., ¶6, Exhibit F; Trombetta Aff., ¶7, Exhibit F.

9. Admitted.

10. Admitted.

11. Denied. The appraisal set forth the appraiser’s estimate as to fair market of rents.

12. Denied. Cendant did not need to meet the guidelines. Luongo Dep., pp. 63-64, 99-102. Shortsleeve Expert Report, p. 2.

13. Denied. Cendant calculated these amounts erroneously. Trombetta Aff., ¶7, Ex. F; Shortsleeve Expert Report, p. 2.

14. Cendant sent Mr. and Mrs. Mendes a document entitled commitment letter. The terms of the letter are set forth therein.

15. The terms of the alleged commitment letter are set forth therein.

16. Denied in that FHA guidelines are not mandatory. Luongo Dep., pp. 63-64, 99-102; Shortsleeve Expert Report, p. 2.

17. The terms of the alleged commitment letter are set forth therein.

18. The terms of the alleged commitment letter are set forth therein.

19. Denied. Mr. Luongo testified that Cendant need not comply with the guidelines. Luongo Dep., pp. 63-64, 99-102. See also Shortsleeve Report, p. 2.

20. Denied. There is no evidence as to 2001 standards. Affidavit of Clair Taylor, Exhibit A.

21. Admitted.

22. Mr. and Mrs. Mendes state that the terms of the alleged commitment letter are contained therein.

23. Denied. The terms of the letter are set forth therein. In addition, Mr. and Mrs. Mendes did not understand the letter to say what Cendant contends it states. A. Mendes Dep., p. 169.

24. Mr. and Mrs. Mendes admit that the appraiser increased his assessment of the fair market rental value of the property. Taylor Aff., ¶9, Ex. E.

25. Denied. The appraisal set forth only the appraiser's estimate of the value of fair market rents. Taylor Aff., ¶9, Ex. E.

26. Admitted.

27. Admitted.

28. Denied. As noted in Response 25, the appraiser estimated only the value of fair market rents. Taylor Aff., ¶9, Ex. E. Cendant also arranged for the appraisal. A. Mendes Aff., ¶7, Exhibit G.

29. Denied. Cendant never requested that Mr. and Mrs. Mendes provide bank statements showing the source of the \$9,000 deposit. Mr. and Mrs. Mendes had the ability to do so. Mendes Aff., ¶11; A. Mendes Dep., p. 216.

30. Denied. Cendant never requested that Mr. and Mrs. Mendes provide an escrow letter. Mr. and Mrs. Mendes had the ability to do so. Mendes Aff., ¶¶6, 11, Ex. F; D. Mendes Aff., ¶¶1-4.

31. Denied. Mr. and Mrs. Mendes possessed more than \$2,768.16 in cash. Mendes Aff., ¶¶6, 11, Ex. F; D. Mendes Aff., ¶¶1-4.

32. Denied. Cendant indicated that it could not close because of an issue relating to rents. Trombetta Aff., ¶7, Exhibit G.

33. Admitted.

34. Admitted.

35. Admitted.

ANTHONY AND DORIS MENDES,

By their attorney,
LAW OFFICE OF CHRISTOPHER J. TROMBETTA

/s Christopher J. Trombetta
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October 24 , 2006

CERTIFICATE OF SERVICE

I, Christopher J. Trombetta, do hereby certify that on October 24, 2006 a copy of the foregoing document has been served via electronic mail on opposing counsel in this action.

/s Christopher J. Trombetta
Christopher J. Trombetta